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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,081	01/22/2004	Vijaylaxmi Chakravarty	AUS920030847US1	6414

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EXAMINER

RAYYAN, SUSAN F

ART UNIT	PAPER NUMBER
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2167

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/763,081	Applicant(s) CHAKRAVARTY ET AL.	
	Examiner Susan F. Rayyan	Art Unit 2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |


1/19/07

Response to Arguments

1. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

DETAILED ACTION

2. Claims 1-22 are pending.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard claim 1, the limitation "in response to determining a predetermined length of time from when said request is sent has not expired, receiving said first file in said communication program" and "in response to determining a predetermined length of time from when said request is sent has expired, encapsulating said first file in a message transmission and sending said message transmission to a target address" are indefinite. "In response to determining a predetermined length of time from when said request is sent has not expired, receiving said first file in said communication program" is indefinite because it is unclear how the communication program receives said first file before said first file as a first file has not been sent. In addition the limitation is written

from the point of view of the user (the user is receiving said first file when it is determined the predetermined time has not expired) whereas the second limitation is written from the point of view of the sender (the sender is "encapsulating said first file in a message transmission and sending said message transmission to a target address when it is determined the predetermined time has expired").

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication Number 2005/0071239 issued to Peter James Tormey et al ("Tormey") and US Patent Application Publication Number 2004/0193900 A1 issued to Mark Nair ("Nair").

As per claims 1,15,22 Tormey teaches:

sending a request for a first file from a communication program (paragraph 5, lines 7-9 and Figure 1A, as search using a web-based search engine and paragraph 43 lines 1-22 receiving a listing and paragraph 44, lines 1-2);

receiving said first file in said communication program ((paragraph 5, lines 7-9 and Figure 1A, as receiving search results and paragraph 43 lines 1-22 receiving a listing);

encapsulating said first file in a message transmission and sending said message transmission to a target address (paragraph 83 as e-mail response).

Tormey does not explicitly teach "in response to determining a predetermined length of time from when said request is sent has not expired" and "in response to determining a predetermined length of time from when said request is sent has expired". Nair teaches choosing a method of delivery based on connection type. Video is sent immediately on a broadband connection or delivery is delayed and sent latter by a modem connection (paragraph 58). Clearly the selection of the delivery method is based on the amount of time to download a file to reduce bandwidth consumption during peak hours. It would have been obvious to one of ordinary skill in the art to modify Tormey with "in response to determining a predetermined length of time from when said request is sent has not expired" and "in response to determining a predetermined length of time from when said request is sent has expired" to reduce bandwidth consumption during peak hours (paragraph 58, lines 5-6).

As per claim 2, same as claim arguments above and Nair teaches:
responsive to said predetermined length of time expiring before said receipt occurs,
detecting whether a user prefers to continue waiting for said receipt (paragraph 45,
lines 16-20 as dialup to download when requested by user).

As per claim 3, same as claim arguments above and Nair teaches:
further comprising setting said predetermined length of time in response to a
configuration input (paragraph 45, lines 16-20 as automatically dial into connection at a
latter time).

As per claim 4, same as claim arguments above and Tormey teaches:

further comprising designating an email address as said target address (paragraph 78, user supplies e-mail address to supplier as a reply address).

As per claim 5, same as claim arguments above and Nair teaches:

further comprising adjusting said predetermined length of time in response to a task priority of said communication program (paragraph 45, transmission time adjusted by user).

As per claim 6, same as claim arguments above and Tormey teaches:

wherein said sending step further comprises sending from a hypertext browser (paragraph 41).

As per claim 7, same as claim arguments above and Tormey teaches:

wherein said sending step further comprises sending a request for a first file, which is a markup language file (paragraph 42).

As per claim 8 Tormey teaches:

means for sending a request for a first file from a communication program (paragraph 43, lines 1-22 and paragraph 44, lines 1-2);

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means for receiving said first file in said communication program ((paragraph 5, lines 7-9 and Figure 1A, as receiving search results and paragraph 43 lines 1-22 receiving a listing);

means for encapsulating said first file in a message transmission and means for sending said message transmission to a target address (paragraph 83 as e-mail response).

Tormey does not explicitly teach " a predetermined length of time from when said request is sent has not expired" and "a predetermined length of time from when said request is sent has expired" . Nair teaches choosing a method of delivery based on connection type. Video is sent immediately on a broadband connection or delivery is delayed and sent latter by a modem connection (paragraph 58). Clearly the selection of the delivery method is based on the amount of time to download a file to reduce bandwidth consumption during peak hours. It would have been obvious to one of ordinary skill in the art to modify Tormey with " a predetermined length of time from when said request is sent has not expired" and " predetermined length of time from when said request is sent has expired" to reduce bandwidth consumption during peak hours (paragraph 58, lines 5-6).

As per claim 9, same as claim arguments above and Nair teaches:

further comprising means for, responsive to said predetermined length of time expiring before said receipt occurs, detecting whether a user prefers to continue waiting for said receipt. (paragraph 45, lines 16-20 as dialup to download when requested by user).

As per claim 10, same as claim arguments above and Nair teaches:

wherein said means determining whether a predetermined length has expired further comprises means for configurably fixing said predetermined length of time (paragraph 45, lines 16-20 as automatically dial into connection at a latter time).

As per claim 11, same as claim arguments above and Tormey teaches:

further comprising means for designating an email address as said target address address (paragraph 78, user supplies e-mail address to supplier as a reply address).

As per claim 12, same as claim arguments above and Nair teaches:

further comprising means for comprising adjusting said length of time in response to a task priority of said communication program (paragraph 45, transmission time adjusted by user).

As per claim 13, same as claim arguments above and Tormey teaches:

wherein said communication program is a hypertext browser (paragraph 41).

As per claim 14, same as claim arguments above and Tormey teaches:

wherein said first file is a markup language file. (paragraph 42).

As per claim 16, same as claim arguments above and Nair teaches:

further comprising instructions on the computer readable medium for, responsive to said predetermined length of time expiring before said receipt occurs, detecting whether a user prefers to continue waiting for said first file (paragraph 45, lines 16-20 as dialup to download when requested by user).

As per claim 17, same as claim arguments above and Nair teaches:

wherein said instructions for determining whether a predetermined length has expired further comprises instructions on the computer-readable medium for configurably fixing said predetermined length of time (paragraph 45, lines 16-20 as automatically dial into connection at a latter time).

As per claim 18, same as claim arguments above and Tormey teaches:

further comprising instructions on the computer-readable medium for designating an email address as said target address (paragraph 85, lines 13-10 and Figure 9 , paragraph 78, user supplies e-mail address to supplier as a reply address).

As per claim 19, same as claim arguments above and Nair teaches:

further comprising instructions on the computer-readable medium for comprising adjusting said predetermined length of time in response to a task priority of said communication program paragraph 45, transmission time adjusted by user).

As per claim 20, same as claim arguments above and Tormey teaches:
wherein said communication program is a hypertext browser(paragraph 41).

As per claim 21, same as claim arguments above and Tormey teaches:
wherein said first file is a markup language file(paragraph 42).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Contact Information

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Rayyan whose telephone number is (571) 272-1675. The examiner can normally be reached M-F: 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Susan Rayyan

January 19, 2006


HOSAIN ALAM
SUPERVISORY PATENT EXAMINER